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NATIONAL BROADCASTING COMPANY, INC.
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

RECEIVED

OCT 20 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

**Re: Reply Comments of National Broadcasting
 Company, Inc.; CS Docket No. 97-55**

Dear Mr. Caton:

Enclosed for filing please find the original and eight (8) copies of the Reply Comments of National Broadcasting Company, Inc. in the above-referenced matter.

Please direct any questions that you may have to the undersigned.

Respectfully submitted,



Diane Zipursky

Enclosures

10/20/97
LH/ABO/DE

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Joint Voluntary Proposal for Video
Programming Rating System of the
National Association of Broadcasters,
the National Cable Television
Association, and the Motion Picture
Association of America)

CS Docket No. 97-55

To: The Commission

REPLY COMMENTS OF
NATIONAL BROADCASTING COMPANY, INC.

NATIONAL BROADCASTING
COMPANY, INC.

Richard Cotton
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Its Attorneys

October 20, 1997

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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To: The Commission

**REPLY COMMENTS OF
NATIONAL BROADCASTING COMPANY, INC.**

National Broadcasting Company, Inc. ("NBC"), pursuant to the Commission's *Public Notice* of September 9, 1997,^{1/} hereby submits its Reply Comments concerning the revised proposal jointly developed by the National Association of Broadcasters ("NAB"), the National Cable Television Association ("NCTA"), and the Motion Picture Association of America ("MPAA") for a voluntary system for rating video programming (the "revised industry proposal").

I. Introduction and Summary

NBC has been, and remains, committed to fulfilling the aims of Section 551 of the Telecommunications Act of 1996 (the "Act") namely, providing parents with clear, easy-to-understand information about the content of its programming. NBC's methodology and approach to program ratings, while not identical in form to the revised industry proposal, relies upon age-appropriateness designations which are

^{1/} *Commission Seeks Comment On Revised Industry Proposal for Rating Video Programming (CS Docket No. 97-55)*, Public Notice, Report No. CS 97-25, released September 9, 1997 ("*Public Notice*").

at the core of the revised industry proposal. In many situations, it is entirely possible that NBC's ratings will be the same as the approach taken by other networks since the revised industry proposal calls for the addition of content-based designations only "where appropriate." In those instances where there are differences, NBC's alternative model provides supplemental content-related information through expanded use, where appropriate, of narrative on-screen and audio advisories.

Moreover, to enhance its effectiveness, we have incorporated this rating plan into an integrated five-point program to provide parents with additional information concerning the content of our programs. We will monitor the response to our rating and information program, and will continue to examine other methods and ways to refine the information we provide to the parents of our young viewers. Based on our experience, NBC believes that NBC's rating plan at this time provides the best means of supplying our viewers with the most reliable, useful, and consistent rating information possible, and is a rational variation of the plan set forth in the revised industry proposal.

NBC's variation of the revised industry proposal, within the context of a comprehensive viewer information program, is fully consistent with Section 551 of the Act. Both the text of that statute and its extensive legislative history repeatedly underscore that the rating system to be developed would be entirely voluntary.

The Conference Report said:

[N]othing in subsection (b)(1) authorizes, and the conferees do not intend that, the Commission require the adoption of the recommended rating system nor that any particular program be rated.

H. R. Rep. No. 458, 104th Cong. 2d Sess. 195 (1996).

On the House floor, the chief House sponsor of the legislation said:

[u]nder this bill, no program will ever be rated unless industry participants decide to do the ratings themselves. No government entity will ever rate a show; no government bureaucracy will ever rate a show; no government agency is empowered to sanction any broadcaster for refusing to rate a show.

142 Cong. Rec. H1171 (daily ed. February 1, 1996).

On the Senate floor, the chief Senate sponsor of the legislation said:

Section 551 does not mandate a government rating system, or that a program be rated if a broadcaster refuses to rate programming.... No penalties are established by this provision if a television broadcaster refuses to develop ratings, or apply whatever ratings or identification system is established voluntarily, or by the advisory committee under the FCC. The development of any rating or other television program identification is entirely voluntary

142 Cong. Rec. 5702 (daily ed. February 1, 1996).

Congress made the rating scheme process voluntary precisely because it recognized that any attempt to impose a compulsory system mandated by government would not be compatible with the First Amendment. In any action which the Commission undertakes relating to program ratings, the Commission, with its special expertise in First Amendment issues, should be extremely sensitive both to the clear statutory language and legislative history here as well as to the First Amendment. The Commission should afford video programmers the

opportunity to determine what rating methodology and parental information systems works best. Such measures of flexibility and tolerance for pluralism in ratings systems and approaches is necessary to safeguard the First Amendment interests implicated by Section 551.

II. NBC's Rating And Information Program Is A Reasonable Variation Of The Revised Industry Ratings System Proposal And Is Designed To Achieve The Same Ends

Under the terms of Section 551, video programming distributors were given a period of one year following the enactment of the Act (1) to establish "voluntary" rules -- acceptable to the Commission -- for rating video programs which contain sexual, violent, or other indecent material with respect to which parents should receive information prior to its display to children; and (2) to agree "voluntarily" to broadcast signals that contain ratings for such programming. See Section 551(e)(1).

NBC believes that our ratings system provides parents the information they need to make appropriate viewing choices for their children, without causing either confusion or creating a negative "chilling" effect on expression in over-the-air broadcast television. NBC's expanded program consists of a coordinated effort incorporating five components:

1. Continued Use of Age-Appropriateness Designations. First, NBC employs, in a careful and constructive way, the age-appropriateness designations which continue to be the foundation of the revised industry proposal.^{2/} These icons -

^{2/} During House of Representatives consideration of the Conference Report on the Act, Congressman John Dingell expressly discussed age appropriateness as the
(continued...)

- which are now larger than in the past -- appear for fifteen seconds at the top of all of NBC's entertainment programming. In longer format programs and theatrical movies, these age-based designations are displayed again at the beginning of the second hour of the program.

NBC is retaining its primary reliance on these age-based identifiers because our experience has proven age appropriateness to be the most reliable and consistent gauge of program suitability for children. Such age-based designations closely reflect what we know about the cognitive development of children. These designations can be consistently applied and convey the same fundamental type of guidance to all parents. To assure proper and consistent rating of programs according to these age-suitability standards, NBC's Broadcast Standards department has developed guidelines to implement these ratings for each episode of all of the entertainment programs telecast on the network. These guidelines form a constituent part of a more far reaching program of thorough reviews by the Broadcast Standards office designed to ensure that NBC's programming comports with audience expectations, societal norms and the psychological well-being of children viewing the programming.

2. Expanded Use of On-Screen Program Content Advisories. The second element of NBC's program is the expanded use of on-screen and audio advisories. Specifically, as noted above, NBC is supplementing, where appropriate, the age-

2/(...continued)

focal point for a voluntary rating system. See 142 Cong. Rec. H1156 (daily ed. February 1, 1996).

based rating codes that appear at the outset of our programming with content advisory messages which alert parents to programming issues that warrant their attention and place the particular content within the context of the program in question. Moreover, to assure that parents have adequate opportunity to apprise themselves of such content issues in advance of the program telecast, NBC also publishes these advisories in our print advertisements and press releases, and incorporates them into our broadcast promotional announcements for the programs in question.

For example, a recent broadcast of the program *Drop Zone* (age rating: TV-14) was accompanied by the additional advisory that "[t]his program has action sequences containing violence. Parental discretion advised." *Every Nine Seconds* (age rating: TV-14), a made-for-television movie recently broadcast on the network carried a similar advisory. A recent episode of the weekly series *Homicide* entitled "Prison Riot" received a special advisory with more contextual information to alert viewers that "[the] episode has a level of violence unusual for the series." Such advisories, we believe, provide concerned parents with more immediately accessible program content information than do the bare content-related alphabetical icons found in the revised industry proposal. In NBC's judgment, such narrative advisories are best calculated to focus parents' attention on the content of a particular program and are likely to provide the most meaningful supplementary information to the age-based icons.

3. Easier Access to Rating and Advisory Information. Third, in keeping with our efforts to facilitate access to the rating and any content advisory information related to our programming, NBC also makes this information available to the public on our Internet site on the world wide web (<http://www.nbc.com>). In addition, interested viewers can obtain rating and content information on our programs by calling the network and listening to a pre-recorded message.

4. Public Service Announcements. Fourth, in response to feedback from parents, NBC has developed a series of public service announcements as part of our award-winning national public service campaign, *The More You Know*. These PSAs, which will air during NBC's new 1997-1998 television season, feature actors from NBC programs who reinforce for parents the importance of taking an active role in guiding their children's television viewing selections.

5. A Commitment to Listen. Finally, NBC intends to continue to monitor parental response to our rating and information program as part of our frequent surveys to sample audience opinion. The feedback drawn from these inquiries will provide useful guidance in our ongoing efforts to analyze and, if necessary, revise and enhance the quality of program information we deliver to our viewers.

NBC has developed and undertaken the foregoing program on a voluntary basis. We believe our program comports with the core principles of the revised industry proposal and is a reasonable variation of that system. In many situations, it is entirely possible that NBC's ratings will be the same as the approach taken by

other networks since the revised industry proposal calls for the addition of content-based designations only "where appropriate." Our program represents NBC's best judgment as to what will most effectively assist our audience in discharging their supervisory responsibilities relative to their children's television viewing.

Reasonable persons may differ as to whether the revised industry proposal or NBC's variation thereon more effectively serves the needs and interests of parents. Only experience with a variety of rating methodologies is likely to reveal which methods work best.^{3/} The statute's embrace of a voluntary ratings system leads ineluctably to this sort of pluralism, and the comments in this proceeding also support it.^{4/}

III. The Creation of, and Participation In, Any Ratings System Must Be Entirely Voluntary

A. *The Text of Section 551 and the Legislative History Leave No Doubt That The Rating System Is And Must Be Entirely Voluntary*

In the Commission's consideration of all matters involving program ratings, the Commission should consistently acknowledge the guiding principle advanced by the V-Chip legislation: the use of any rating scheme was to be voluntary.. The text of Section 551 evidences this point.

^{3/} See *The TV Ratings Experiment*, WASH. POST, October 3, 1997, at A18 (noting that the emergence of NBC's rating method alongside the revised industry proposal provides "a matchless opportunity to find out" what works best for parents).

^{4/} See, e.g., Joint Comments at 5; Comments of the American Academy of Child & Adolescent Psychiatry, in CS Docket No. 97-55, filed October 6, 1997, at 2, 3.

The instant proceeding involves a Congressional directive to the Commission to evaluate the industry's proposed "rating" system to determine its acceptability. Specifically, the current proceeding is seeking to determine whether or not distributors of video programming have:

(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and

(B) agreed voluntarily to broadcast signals that contain ratings of such programming.

Section 551(e)(1) (emphasis added).

The plain meaning of the foregoing passage is that the ratings scheme envisioned in Section 551 was to be voluntary, not compulsory. The legislative history of this provision repeatedly reinforces and emphasizes this most fundamental principle. The Conference Committee Report accompanying the Act could not be more clear or precise regarding the voluntary nature of the program rating system:

[N]othing in subsection (b)(1) authorizes, and the conferees do not intend that, the Commission require the adoption of the recommended rating system nor that any particular program be rated.

H. R. Rep. No. 458, 104th Cong. 2d Sess. 195 (1996) (emphasis added). When the House of Representatives considered the Conference Report on the Act, the ranking minority member of the House Telecommunications Subcommittee and the original sponsor of this provision in the House, Congressman Markey, underscored the voluntary nature of industry-developed guidelines when he explained that

[u]nder this bill, no program will ever be rated unless industry participants decide to do the ratings themselves. No government entity will ever rate a show; no government bureaucracy will ever rate a show; no government agency is empowered to sanction any broadcaster for refusing to rate a show.

142 Cong. Rec. H1171 (daily ed. February 1, 1996).^{5/} Likewise, Congressman Dingell, the ranking member of the House Commerce Committee commented that the bill "encourages television broadcasters to develop a voluntary rating system that will provide parents with the means to discern whether programming coming into their home is age-appropriate for their children" 142 Cong. Rec. H1156 (daily ed. February 1, 1996) (emphasis added).

In the Senate, Senator Conrad, the author of the Senate version of the measure, observed that

Section 551 does not mandate a government rating system, or that a program be rated if a broadcaster refuses to rate programming. Nor does this legislation establish a government entity to rate television programming. There is also no authority or suggestion to rate or identify in any way religious or political programming. No penalties are established by this provision if a television broadcaster refuses to develop ratings, or apply whatever ratings or identification system is established voluntarily, or by the advisory committee under the FCC. The development of any rating or other television program identification is entirely voluntary -- the effectiveness of the V-chip technology as an aid for parents rests with television broadcasters and cable operators, not the Federal Government.

^{5/} In an earlier statement discussing his V-chip amendment to H.R. 1555, Congressman Markey remarked that, "[a]ll of the ratings will be done voluntarily by the broadcasters. There is no mandate. There is no enforcement mechanism. There is absolutely no connective tissue between this bill and any First Amendment violation." 141 Cong. Rec. H8486 (daily ed. August 4, 1995) (emphasis added).

142 Cong. Rec. S702 (daily ed. February 1, 1996) (emphasis added).

The Commission should acknowledge in considering the issues of program ratings these clear statements of Congressional intent.

B. *Any Attempt by Government to Impose a Compulsory Video Programming Rating Scheme Would Present Grave First Amendment Concerns*

As the foregoing discussion observes, the V-Chip legislation totally and completely endorsed the principle that any ratings system must be voluntary. In adopting this statutory scheme, Congress wisely recognized that any attempt by government to establish any particular rating system as a compulsory standard to be followed by all video program distributors would impinge upon important First Amendment interests and therefore chose not to do so.^{6/}

IV. Conclusion

NBC has acted to ensure that parents receive complete, relevant, and reliable information concerning television programming in a format that will most

6/ See, e.g., *City of Lakewood v. Plain Dealer Publishing Company*, 486 U.S. 750 (1988) (Municipal ordinance vesting mayor with unfettered discretion to grant or deny annual permits to place news racks on public property held unconstitutional by the Court stating, "in the area of free expression a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship."); *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676 (1968) (Municipal ordinance creating motion picture ratings system and requiring exhibitors to file a proposed classification for each film with a review board prior to its exhibition held unconstitutional on grounds of vagueness); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963) (Rhode Island law creating a commission which, *inter alia*, distributed to local law enforcement organizations lists of publications considered to be "objectionable" for children under the age of 18 held unconstitutional because of the likelihood that it would cause publishers to engage in self-censorship to avoid appearing on the list).

effectively assist them in guiding their childrens' viewing choices. NBC has implemented a ratings program which in its judgment most effectively responds to these objectives. NBC urges the Commission to afford all video programming providers the flexibility to determine in an empirical environment what tools work best to meet the goals of the Act.

Respectfully submitted,

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